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TERMS & CONDITIONS – GOODS AND SUPPLIES

1 DEFINITIONS AND INTERPRETATION

- 1.1 In these conditions “the Contract” means the Contract concluded between the Council and the Supplier, including all specifications, plans, drawings, instructions to tender, tender documents and all other documents that are relevant to the Contract and are listed in the schedule and also such of these conditions as are included in the terms and provisions of the Contract.
- 1.2 For the purpose of this Contract except where expressly stated to the contrary, the following words shall have the following meaning:

Acceptance Criteria	means any acceptance criteria for the purpose of Clause 5 herein;
Affected Party	means the party seeking to claim relief in respect of Force Majeure Event;
Authorised Officer	means the person duly authorised by Council to act within the purposes of this provision;
Commercially Sensitive Information	means the information listed by the Supplier as being Commercially Sensitive in accordance with the Freedom of Information Statement and Clause 20;
Confidential Information	means the information provided by either party to the other in any manner or form that requires the protections as set out in Clause 19, provided that each item of information would appear to a reasonable person to be confidential or is specifically stated by the disclosing party to be confidential;
Contract Documents	means the documents as set out in Clause 3.1;
Contract Period	means the period from this Contract taking effect until its expiry in accordance with Clause 4 or its earlier termination;
Contract Price	means the price exclusive of VAT, payable to the Supplier by the Council under the Contract for the full and proper performance by the Supplier of his part of the Contract as determined under the provisions of the Contract;

Contracting Council	means any Contracting Council;
Supplier	means the person who undertakes to supply the Goods or render such other services for the Council as is provided by the Contract;
Council	means North Down Borough Council;
Environmental Information Regulations	means the Environmental Information Regulations 2004;
Force Majeure	means an act of God, disease, strike, lock-out, fire or other accident or incident of any nature beyond the control of the relevant party;
Freedom of Information	means the Freedom of Information Act 2000;
Goods	means all goods which the Supplier is required under the Contract to supply or in connection with which he is required under the Contract to carry out any service;
Invitation to Tender	means the Invitation to Tender issued by the Council for the supply of Goods and/or Services;
Order	means an Order placed by the Council for the supply and delivery of Goods at the Contract Price. The Council shall allocate an official number for each Order;
Samples	means any samples submitted to the Council as part of the procurement procedure leading to the award of the contract;
Services	means any Services supplied or to be supplied by the Supplier in accordance with this Contract;
Specification	means the description of the goods and supplies to be delivered under the Contract;
Sub-Contractor	means the third party with whom the Supplier enters into a sub-contract or its servants or agents and any third party with whom that third party enters into a sub-contract or its servants or agents;
Supplier Personnel	means all employees, agents, consultants and contractors of the Supplier and/or of any Sub-Contractor.

- 1.3 Any decision, act or thing that the Council is required or authorised to take or do under the Contract may be taken or done by any person authorised either generally or specifically, by the Council to take or do that decision, act or thing, and that person shall be the “Authorised Officer” and shall be the person named in the schedule or his appointed representative.
- 1.4 The Council shall deem that any communication sent to the Supplier by name at the last known place of abode or business of the Supplier to have been received, unless it is returned by the Post Office undelivered, to have been given or made at the time when the letter would in the ordinary course of post be delivered.

2 COMMENCEMENT AND DURATION

The commencement date of the Contract and the Contract Period shall be on the date or dates specified in the Invitation to Tender or Schedule.

3 SCOPE

3.1 The Contract shall comprise of the following: -

- the Terms and Conditions of Contract
- the Special Conditions; if any
- the Specification
- the Tender submitted by Supplier in response to the Invitation to Tender including any Method Statement
- Contract Price

3.2 In the event of any conflict or inconsistency between these documents the following order of precedence shall be deemed to apply:

- the Terms and Conditions of Contract
- the Special Conditions; if any
- the Specification
- the Tender submitted by the Supplier in response to the Invitation to Tender
- the Order

3.3 The Contract together with any Order issued hereunder constitutes the entire understanding between the parties relating to the subject matter of the Contract and supersedes all prior representations, writings, negotiations or

understandings with respect hereto, except in respect of any fraudulent misrepresentation made by either party.

4 SUPPLY AND DELIVERY

- 4.1 The Council may at any time during the Contract Period order Goods from the Supplier by serving an Order on the Supplier.
- 4.2 The Supplier shall at his own expense supply, deliver and install, where specified, in accordance with the provisions of the Contract such Goods and in such quantities and by such methods of delivery and at such times and places as set out in the Contract Documents or (if not set out) as shall be required by the Council.
- 4.3 If the Contract Period expires before the supply or delivery of any Goods comprised in an Order, the Supplier shall remain liable for the completion of the Order. The terms and conditions of this Contract shall continue in full force and effect until such completion occurs.
- 4.4 The Goods shall comply with the requirements of any statutes, orders, regulations or bye-laws in force.
- 4.5 The Goods shall be sufficient for the purpose for which the Goods are ordinarily used and for any particular purpose made known to the Supplier by the Council. The Council relies on the skill and judgement of the Supplier in the supply of the Goods and their execution of the Contract.
- 4.6 The Council reserves the right to alter from time to time the said Samples, patterns, specifications, plans, drawings or other documents as and from a date and to the extent specified by the Council after consultation.
- 4.7 Where any such alteration involves a change in price, or delivery, or the period required for the production of any Goods, the Council and the Supplier shall agree a revised Contract Price for the Goods and the Contract shall be amended in writing. The Contract shall remain unaltered.

5 THE GOODS

- 5.1 The Supplier shall at its own cost ensure that all Goods supplied to the Council under the Contract shall be compliant with:
 - the Specification
 - any requirement of any legislation
 - any European Union specification or Code of Practice for British Standard specification or British Standard Code of Practice or European Union equivalent and that all Goods supplied are fit for purpose.
- 5.2 The Supplier shall ensure that any Goods supplied hereunder will correspond in all respects with any Samples.

- 5.3 The Council shall have the right where in its sole opinion the Goods do not correspond in all respects with any Samples to reject those Goods.
- 5.4 Where under the terms of the Contract any Acceptance Criteria have been specified, the Council shall not be obliged to accept the Goods unless and until the Supplier has demonstrated that all Acceptance Criteria for the Goods have been met and the Council has issued an acceptance letter.
- 5.5 The Council may reject any Goods that in its sole opinion believes are not of satisfactory quality or are not in accordance with the requirements of the Contract or which fail to satisfy the Acceptance Criteria.
- 5.6 In all cases of rejection, the Supplier shall, at his own expense, remove the rejected Goods and replace them as the Council directs with Goods that comply with the Specification.
- 5.7 Unless otherwise stated by the Contract all containers (including packing cases, boxes, tins, drums and wrappings) supplied by the Supplier shall be considered as non-returnable and their costs included in the Contract Price.
- 5.8 Unless otherwise required, the Supplier shall guarantee Goods for a period of not less than 12 months from them being put into service or 18 months from delivery
- 5.9 If the Council shall within the Guarantee period whether as set out in Clause 5.8 or in any other guarantee or manufacturer's guarantee or other guarantee howsoever provided or within thirty days thereafter give notice in writing to the Supplier of any defect in any of the Goods which may have arisen during the Guarantee Period under proper and normal use, the Supplier shall (without prejudice to any other rights or remedies which the Council may have) as quickly as possible remedy such defects (whether by repair or replacement as the Council may elect) without cost to the Council.

6 MISTAKES IN INFORMATION

- 6.1 The Supplier shall be responsible for the accuracy of all drawings; documentation and information supplied to the Council by the Supplier in connection with the provision of the Goods and shall pay the Council any extra costs associated with discrepancies, errors and omissions included but not limited to any loss or damage suffered by the Council.

7 DELIVERY AND CARRIAGE

- 7.1 The Goods shall be delivered at the expense of the Supplier to the place or places specified in the Contract Documents or otherwise specified by the Council and in accordance with specified delivery timescales.
- 7.2 Any equipment used by the Council in connection with the delivery shall be provided without acceptance by the Council of any liability whatsoever and the

Supplier shall indemnify the Council in respect of any actions, suits, claims, demands, losses, charges, loss and expenses which the Council or the Supplier may suffer or incur as a result of or in connection with any damage occurring in the course of delivery or installation to the extent that any such damage or injury is attributable to any act or omission of the Supplier or its Sub-Contractors.

- 7.3 The property of the Goods transfers when the goods are delivered. Delivery is deemed to have occurred when they reach possession of the Council or its Authorised Officer.
- 7.4 When after delivery any of the Goods are rejected, those Goods shall, for the purpose of the Contract, be considered not to have been delivered under the Contract and the property of the Goods shall return to the Supplier who will have been informed of the rejection.
- 7.5 Any Goods supplied in excess of that ordered or rejected by the Council shall be returned at the Supplier's risk and expense unless otherwise stated.
- 7.6 The Supplier shall provide the Council with a delivery note giving the full particulars of the delivery including the Order Number.
- 7.7 Where Goods are delivered by weight and are not weighed at the place of delivery, the Supplier shall provide the Council with a weight ticket at the time of delivery.
- 7.8 Where Goods are supplied by weight, the Council shall pay for the net weight of the Goods and shall not be liable for the return of any such packaging material.

8 CONTRACT PRICE

- 8.1 The Contract Price shall remain fixed (not subject to variation), unless the Council agrees that there has been a Change in Legislation that could not be foreseen as per Clause 29, for the Contract Period or for 12 months from the commencement date of the Contract Period if the Contract Period is more than 12 months.
- 8.2 Thereafter, if by reason of any rise or fall on the costs (ruling at the date of tender) of the materials, labour, transport or the carrying out by the Supplier of statutory obligations the cost of the Contractor performing his/its obligations under the Contract shall be increased or reduced, the amount of such increase or reduction be added to or deducted from the price quoted in the Contract documents, as the case may be, provided that no account shall be taken of any amount by which any costs incurred by the Supplier has been increased by the default, act or omission of the Supplier.
- 8.3 Unless otherwise specified, the Supplier shall only be entitled to one price increase for each year of the remainder of the Contract Period and any subsequent period arising from the Council having exercised its option to renew

the Contract and any price increase shall be in line with the All Items Retail Price Index.

- 8.4 All requests for price increases must be made in writing by the Supplier and sent to the Authorised Officer not less than two months prior to the expiry of the first year of the Contract Period and thereafter not less than two months before each anniversary of the commencement date of the Contract (and any subsequent period, if applicable).
- 8.5 Any price increase under this clause shall not be awarded unless the aforementioned provision is adhered to and unless the Supplier shall within 28 days of it being requested to do so, furnish such evidence as the Council may reasonably require to substantiate the claim.

9 INVOICES AND PAYMENT

- 9.1 The charges payable by the Council in respect of Goods shall be determined by reference to the Price of Goods Schedule and the quantity comprised in the Order and delivered to the Council in accordance with the terms of this Contract.
- 9.2 The charges are exclusive of Value Added Tax. The Council shall pay the Value Added Tax on the charges at the applicable rate.
- 9.3 The Council may reduce payment in respect of Goods that the Supplier has, in the sole opinion of the Council, failed to provide or has provided inadequately.
- 9.4 The Council shall pay any undisputed sums within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for work completed and Goods supplied to the satisfaction of the Council.
- 9.5 Payment will be made by BACS.
- 9.6 In accordance with Clause 29 and in the event that the Council agrees that a Change in Legislation could not be foreseen and the cost to the Supplier of performing its obligations under the Contract increases or decreases as a result of a Change in Legislation the provisions of Clause 8 shall apply.

10 VARIATIONS

- 10.1 The Supplier shall not alter any of the Goods except as directed by the Council, but the Council shall have the right from time to time during the Contract, by written notice to the Supplier change the specification and add to or omit, or otherwise vary, the Goods including the order in which the Goods are to be delivered. Such a change is herein after called 'a Variation'. The Supplier shall carry out variations as though they were contained within the Contract.
- 10.2 In the event that the Supplier is unable to carry out the Variation within a reasonable timescale in accordance with Clause 10.1 above, the Council may

terminate the Contract and recover from the Supplier the amount of any loss or damage suffered by the Council resulting from the termination.

- 10.3 In the event of any Variation of the Specification requiring an amendment to the Contract Price, such amendment shall be calculated by the Council and agreed in writing with the Supplier. The amount should fairly reflect the nature and extent of the variation. The variation shall not take effect until the revised Contract Price has been agreed. Failing to agree a Variation shall be determined by negotiation or mediation as per Clause 33.
- 10.4 If in the opinion of the Supplier, any such Variation is likely to prevent the Supplier from fulfilling any of their obligations under the Contract, the Supplier shall notify the Council immediately whereupon the Council shall inform the Supplier within ten working days whether or not the said Variations shall be carried out. Until the Council confirms such instructions in writing they shall be deemed not to have been given.

11 USE OF DOCUMENTS, INFORMATION etc.

- 11.1 The Council reserves the general right to disclose information about this Contract, unless otherwise agreed in writing.
- 11.2 Except with the consent in writing of the Council, the Supplier shall not disclose or make use of any of the information issued by or on behalf of the Council in connection with the Contract or any provision thereof to any person other than a person employed by the Supplier in the carrying out of the Contract or any Sub-Contractor, Contractor or other person concerned with same. Such disclosure shall be made in confidence and shall extend so far only as may be necessary for the purposes of the Contract.
- 11.3 Any samples, patterns, specifications, plans, drawings or any other documents issued by or on behalf of the Council for the purposes of the Contract remain the property of the Council.

12 MEETINGS AND REPORTS

- 12.1 When requested the Supplier shall be available to attend meetings at his own expense.
- 12.2 Where progress/performance reports are required to be submitted under the Contract, the Supplier shall render those reports at such time and in such form as may be specified or otherwise agreed between the parties.

13 HEALTH AND SAFETY

- 13.1 The Supplier's attention is drawn to the provision of the Health and Safety at Work (Northern Ireland) Order 1978 and in particular to Article 4 "General Duties of Employers to their Employees".

- 13.2 The Supplier shall adequately train, instruct and supervise staff to ensure that so far as is reasonably practicable, the Health and Safety of all persons who may be affected by the services provided under the Contract.
- 13.3 The Supplier shall make all necessary tests and examinations prior to the delivery of Goods to ensure that they are designed, constructed and tested without risk to the Health and Safety of persons using the Goods and also ensure that adequate information has been supplied about the use of the Goods. The Supplier shall indemnify the Council against all actions, suits, claims, demands, losses, charges, costs and expenses which the Council may suffer and incur as a result of or in connection with any breach of this condition.
- 13.4 The Supplier shall notify the Council of any Health and Safety hazards of which it is aware or which may arise in connection with the performance of this Contract.

14 INDEMNITY AND INSURANCE

- 14.1 Without prejudice to any rights or remedies of the Council (including the Council's rights and remedies under the Contract) the Supplier shall indemnify the Council against all actions, suits, claims, demands, losses, charges, costs and expenses which the Council or any Third Party may suffer or incur as a result of or in connection with any damage to property or in respect of any injury (whether fatal or otherwise) to any person or in respect of any consequential loss which may result directly or indirectly from any defect in the Goods or the negligent or wrongful act or omission of the Supplier.
- 14.2 The Supplier shall be insured with a reputable insurance company and be in possession of a policy or policies providing an adequate level of cover in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of the Contract, in respect of death or personal injury, or loss of or damage to property. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier.
- 14.3 The Supplier shall hold and maintain all necessary insurances that are required for the performance of the contract including but not limited to,
- Professional Indemnity,
Public Liability, and
Employer's Liability
- insurance cover and shall ensure that all professional consultants and Sub-Contractors involved in the provision of the Goods hold and maintain appropriate cover.
- 14.4 The Supplier shall indemnify the Council to a limit specified in the Schedule or Invitation to Tender in respect of any one incident or series of incidents arising out of his performance of the Contract against all claims, proceedings, actions, damages, legal expenses and any other liabilities in respect of any loss of or damage to property which is caused directly or indirectly by any act or omission

of the Supplier save indemnity in respect of death of personal injury, or loss, or damage, was not caused or contributed to by his negligence or default, or the negligence or default of his Staff or Sub-Contractors, or by any circumstances within his or their control.

14.5 The Supplier shall at the request of the Council produce policy documentation.

15 WARRANTIES AND REPRESENTATIONS

15.1 The Supplier warrants and represents that:

15.1.1 the Supplier has full capacity and authority and all necessary consents to enter into and perform this Contract;

15.1.2 the Supplier shall discharge its obligations hereunder with all due skill, care and diligence.

16 INTELLECTUAL PROPERTY

16.1 All patents, copyright and other intellectual property rights in all documents (including but not limited to drawings, working notes and books), transparencies, prints, photographs, negatives, tapes, discs, software information or other items created or supplied by the Council to the Supplier in connection to this Contract shall remain the property of the Council. All originals and copies thereof shall be delivered to the Council upon completion of the Contract or earlier upon receipt of the Council's written notice to the Supplier.

16.2 All patents, copyright and other intellectual property rights relating to the Services, shall vest in the Council and the Supplier waives in favour of the Council all moral rights therein.

16.3 The ownership of and sole right to the copyright in any document prepared by the Supplier in connection with the Contract shall be vested in the Council from the commencement of the preparation of the Contract.

16.4 The Supplier shall not have the right to use any data, reports, drawings, specifications, designs, invention, plans, programs or other material referred to in Clause 16.1 and under Clause 16.3 for its own commercial purposes unless there has been prior written consent by Council and then only in compliance with such terms as may be imposed.

16.5 It shall be a condition of the Contract that, except to the extent that the Goods incorporate designs furnished by the Council, the Goods will not infringe any patent, trademark, registered design, copyright or other right in the nature of intellectual property of any Third Party. The Supplier shall indemnify the Council against all actions, suits, claims, demands, losses, charges, costs and expenses which the Council may suffer or incur as a result of or in connection with any breach of this Clause.

16.6 All intellectual property rights (including ownership and copyright) in any specifications, instructions, plans, drawings, patents, patterns, models, designs or other material.

16.6.1 furnished to or made available to the Supplier by the Council shall remain the property of the Council;

16.6.2 prepared by or for the Supplier for use, or intended use, in relation to the performance of this Contract shall belong to the Council and the Supplier shall not without prior written consent from the Council use or disclose any such intellectual property and intellectual property rights or any other information (whether relevant to this Contract or not) which the Supplier may obtain in performing the Contract except information which is in the public domain.

The Supplier must ensure that any servants, agents, suppliers and sub-contractors engaged by them in relation to the provision of this Contract also adhere to these Conditions by way of international and authorised release under this contract.

16.7 The provisions of this Clause shall apply during the Contract period and continue indefinitely after its expiry or termination.

17 TRANSFER AND SUB-CONTRACTING

17.1 The Supplier shall not assign, transfer, novate, sub-contract or otherwise dispose of this contract or any part thereof without the previous consent in writing of the Council.

17.2 Subject to permission being obtained to sub-contract the Supplier shall remain responsible for any acts and omissions of its Sub-Contractors as though they were its own.

18 DATA PROTECTION

18.1 Each party shall comply with its respective obligations under the provisions of the Data Protection Act 1998.

18.2 Where the Supplier or any of its Sub-Contractors, as part of this Contract, process personal data as a data processor on behalf of the Council, the Supplier shall, and shall procure its Sub-Contractors:

18.2.1 to act only on instructions from the Council as data controller; and

18.2.2 to comply with the Council's instructions in relation to the processing of personal data as such instructions are given and varied from time to time by the Council.

19 CONFIDENTIALITY

19.1 The Supplier acknowledges that any Confidential Information obtained from or relating to the Council, its servants or agents remains the property of the Council.

19.1.1 Each Party: -

- (i) shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and
- (ii) shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Contract or except where disclosure is otherwise expressly permitted by the provisions of this Contract.

19.1.2 The Supplier shall take all necessary precautions to ensure that all Confidential Information obtained from the Council under or in connection with the Contract: -

- (i) is given only to such of the staff and professional advisers or consultants engaged to advise it in connection with the Contract as is strictly necessary;
- (ii) for the performance of the Contract; is treated as confidential and not disclosed (without prior approval) or used by any staff or such professional advisers or consultants otherwise than for the purposes of the Contract.

19.1.3 Where it is considered necessary in the opinion of the Council, the Supplier shall ensure that staff or such professional advisers or consultants sign a confidentiality undertaking before commencing work in connection with the Contract.

19.2 The Supplier shall not use any Confidential Information received otherwise than for the purposes of the Contract.

The provisions of Clause 19.1 shall not apply to any Confidential Information received by one Party from the other: -

- i. which is or becomes public knowledge (otherwise than by breach of this Clause);
- ii. which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

- iii. which is in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- iv. is independently developed without access to the Confidential information; or
- v. which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under Freedom of Information pursuant to Clause 20.

19.3 Nothing in this Condition shall prevent the Council: -

disclosing any Confidential Information for the purpose of: -

- (i) the examination and certification of the Council's accounts;
- or
- (ii) any examination pursuant to Section 7 Local Government N.I. Order 2005

or disclosing any Confidential Information obtained from the Supplier:-

- (i) to any other department, office or agency of the Government;
- or
- (ii) to any person engaged in providing any Goods or Services to the Council for any purpose relating to or ancillary to the Contract. Provided that in disclosing information, the Council discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

19.4 Nothing in this Condition shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of intellectual property rights.

19.5 In the event that the Supplier fails to comply with Clause 19 the Council reserves the right to terminate the Contract by notice in writing with immediate effect.

20 FREEDOM OF INFORMATION

20.1 The Supplier acknowledges that the Council is subject to the requirements of the Freedom of Information Act and Environmental Information Regulations and shall assist and co-operate with the Council (at the Supplier's expense) to enable the Council to comply with information disclosure requirements.

- 20.2 The Supplier in signing the tender document acknowledges the possibility of disclosure under the provisions of the Freedom of Information Act and the Environmental Information Regulations.
- 20.3 The Council shall be responsible for determining at its absolute discretion whether Commercially Sensitive Information or any other information:
- (i.) is exempt from disclosure in accordance with the provisions of the Freedom of Information Act and the Environmental Information Regulations
 - (ii.) is to be disclosed in response to a Request for Information; and
- in no event should the Supplier respond directly to a request for information unless expressly requested to do so by the Council.
- 20.4 All information provided by the Supplier will be considered as confidential up to and including the evaluation process. Beyond this stage the provisions of the Act and Regulations will govern what the Council is obliged to disclose. The evaluation process will be deemed to have been completed when the Council has made its decision or Authorised Officer has decided that the particular procurement exercise is not viable.
- 20.5 Information provided in the Contract Documents could be disclosed in response to a Freedom of Information request. The Council will proceed on the basis of disclosure unless an appropriate exemption applies. Decisions with regard to disclosure will be taken by appropriate Officers within the Council having due regard to the exemptions available and the Public Interest in maintaining the exemption.
- 20.6 Suppliers are required to highlight information that they include in completed Tender documents, which they consider to be commercially sensitive or confidential in nature and should state the precise reasons why that view is taken, in particular issues concerning trade secrets and commercial sensitivity should be highlighted. Suppliers are advised against recording unnecessary information.
- 20.7 In accordance with the Lord Chancellors Code of Practice on the discharge of public functions, the Council will not accept any contractual term that purports to restrict disclosure of information held by the Council in respect of the contract or procurement exercise save as permitted by the Freedom of Information Act or the Environmental Information Regulations. The decision whether to disclose information rests solely with the Council, in their absolute discretion.

21 EQUALITY OF OPPORTUNITY

- 21.1 The Supplier shall comply with all applicable fair employment and treatment and anti-discrimination legislation, including, in particular but not exclusively, the Employment (Northern Ireland) Order 2002, the Fair Employment and Treatment (Northern Ireland) Order 1998, the Sex Discrimination (Northern Ireland) Orders 1976 and 1988, the Equal Pay Act (Northern Ireland) 1970, the

Disability Discrimination Act 1995, the Race Relations (Northern Ireland) Order 1997, the Employment Relations (Northern Ireland) Order 1999 and the Employment Rights (Northern Ireland) Order 1996 and shall use their best endeavours to ensure that in their employment policies and practices and in the delivery of the services required of the Supplier under this agreement that there shall be no unjustifiable inequality of treatment of:

- a. persons of different religions beliefs or political opinions;
- b. man or woman or married or unmarried persons;
- c. persons with or without dependents (including women who are pregnant or on maternity leave and men on paternity leave);
- d. persons of different racial groups (within the meaning of the Race Relations (Northern Ireland) Order 1997);
- e. persons with or without a disability (within the meaning of the Disability Discrimination Act 1995);
- f. persons of different ages; or
- g. persons of different sexual orientation.

21.2 The Supplier shall take all reasonable steps to ensure the observance of the provisions of the above Clause 21.1 by all servants, agents, employees, consultants and Sub-Contractors of the Supplier.

22 HUMAN RIGHTS

22.1 The Supplier shall not do or permit or allow anything to be done which is incompatible with the rights contained within the European Convention on Human Rights and the Human Rights Act 1998.

23 FORCE MAJEURE

23.1 Subject to the remaining provisions of this Clause either party to this Contract may claim relief from liability for non-performance of its obligations to the extent this is due to a Force Majeure Event.

23.2 A party cannot claim relief if the Force Majeure Event is attributable to its wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.

23.3 An Affected Party cannot claim relief as a result of a failure or delay by any other person in the performance of that other person's obligations under a contract with the Affected Party (unless that other person is itself prevented from or delayed in complying with its obligations as a result of a Force Majeure Event).

23.4 The Affected Party shall immediately give the other party written notice of the Force Majeure Event. The notification shall include details of the Force Majeure Event together with evidence of its effect on the obligations of the Affected Party, and any action the Affected Party proposes to take to mitigate its effect.

- 23.5 As soon as practicable following the Affected Party's notification, the Affected Party shall use all reasonable endeavours to continue to perform, or resume and if the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 23.6 The Affected Party shall notify the other party as soon as practicable after the Force Majeure ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract. Following such notification, this Contract shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.

24 WAIVER

- 24.1 The failure of either party to insist upon strict performance of any provisions of the Contract, or the failure of either party to exercise any right or remedy which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by this Contract.
- 24.2 Waiver of any default shall not constitute a waiver of any subsequent default.
- 24.3 No waiver of any of the provisions of this Contract shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing.

25 UNSATISFACTORY PERFORMANCE

- 25.1 Where, in the opinion of Council, the Supplier has failed to perform all or part of the Contract, with the standard of skill, care and diligence which a competent and suitably qualified Supplier could reasonably be expected to achieve, or in accordance with this Contract, the Council may give the Supplier a Notice specifying in which way his performance falls below the contract requirements, or is otherwise unsatisfactory.

In circumstances where such a Notice has been issued the Council may request:

- i. that the Supplier, at his own expense, rectify and perform the Contract to the Council's satisfaction within a period of time specified by the Council including where necessary the repair or re-supply of any Goods already supplied
 - ii. withhold or reduce payments to the Supplier, in such amount as the Council deems appropriate in each individual case.
- 25.2 The waiver of any right or remedy arising from a Breach of Contract shall not constitute a waiver of any right or remedy arising from any other Breach of Contract.

26 CORRUPT GIFTS AND PAYMENTS OF COMMISSION

26.1 The Supplier shall neither:

26.1.1 offer, give or agree to give any person employed by the Council or acting on its behalf any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or performance of this Contract or any other agreement with the Council or for showing or forbearing to show favour or disfavour to any person in relation to this Contract; nor

26.1.2 enter into this Contract if in connection with it commission has been paid or agreed to be paid to any person employed by the Council or acting on its behalf by the Supplier or on the Supplier's behalf or to the Supplier's knowledge, unless before this Contract is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the Council.

26.2 In the event of any breach of this Clause by the Supplier or by anyone employed by the Supplier or acting on the Supplier's behalf (whether with or without the knowledge of the Supplier) or the commission of any offence by the Supplier or by anyone employed by the Supplier or acting on behalf of the Supplier under the Prevention of Corruption Acts, 1889 to 1916 or under Section 46 and 47 of the Local Government Act (N.I.) 1972, the Council may summarily terminate this Contract or the relevant Order by notice in writing to the Supplier in accordance with Clause 30, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Council and provided always that the Council may recover from the Supplier all costs to the Council of terminating and re-letting.

26.3 Any dispute, difference or question arising in respect of either the effect or the interpretation of this Clause or the amount recoverable hereunder by the Council from the Supplier or the right of the Council to determine the Contract, or the amount or value of any such gift, consideration or commission shall be decided by the Council whose decision shall be final and conclusive.

27 STATUTORY AND OTHER REGULATIONS

27.1 The Supplier shall be deemed to have acquainted himself with any and all Acts of Parliament, Statutory Regulations and other such laws, recommendations, guidance or practices as may affect the provision of Goods and/or Service(s) specified under the Contract.

27.2 The Supplier shall be deemed to have acquainted himself with such British/European Standards, Code of Practice as may be relevant to this Contract.

28 LAW AND JURISDICTION

28.1 The Contract shall be governed by and construed in accordance with the Laws of Northern Ireland and the Tenderer and the Council irrevocably submit to the jurisdiction of the Northern Ireland courts.

29 CHANGE OF LEGISLATION

29.1 The Supplier shall neither be relieved of its obligations to supply the Goods in accordance with the terms of the Contract nor be entitled to an increase in the Contract Price as a result of:

- i. a General Change in Legislation; or
- ii. a Specific Change in Legislation where the effect of that Specific Change in Legislation on the Goods is known at the Commencement Date whether by publication of a Bill, as part of a Government Department Consultation, a draft Statutory Instrument or a proposal via European Legislation or otherwise.

29.2 If a Specific Change in Legislation occurs after the commencement date or will occur during the Contract period, the Supplier shall notify the Council of the likely effects of that change, including:

- i. whether a Variation is required to the Goods, the Contract Price of the Contract
- ii. whether any relief from compliance with the Supplier's obligations is required, including any obligations to achieve milestones to meet any service level requirements.

29.3 As soon as practicable after any notification in accordance with Clause 28.2 the Parties shall discuss and agree any way in which the Supplier can mitigate the effect of the Specific Change of Legislation including:

- i. producing evidence that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of costs of its Sub-Contractors;
- ii. demonstrating that a foreseeable Specific Change in Legislation had been taken into account by the Supplier before it had occurred;
- iii. giving evidence as to how the Specific Change of Legislation has affected the Price; and
- iv. demonstrating that any expenditure that has been avoided has been taken into account in amending the Price.

29.4 Any increase in the Price or relief from the Supplier's obligations agreed by the Parties pursuant to Clause 29.1 shall be implemented in accordance with Clause 29.3.

30 TERMINATION

Without prejudice to any other power of termination, the Council may terminate the Contract without notice, for any of the following reasons: -

- i. The breach by the Supplier of any conditions under Clause 10 (Variations), 11 (Use of Documents, Information etc), 16 (Intellectual Property) and 19 (Confidentiality), Clause 20 (Discrimination), Clause 26 (Corrupt Gifts and Payments of Commission), of the Contract or any other material breaches of Contract;
- ii. The failure by the Supplier to comply with a notice given under Clause 25 (Unsatisfactory Performance) within thirty days from the date of that Notice;
- iii. The Supplier ceases or proposes to cease to carry on business;
- iv. There is a change of control of the type referred to in condition Clause 17 (Transfer and Sub-Contracting) in this event the Council shall give one month's notice in writing to the Supplier.
- v. A breach occurs that is not capable of remedy;
- vi. The Supplier commits a series of breaches of the Contract which when taken together amount to a material breach.

31 BREAK

31.1 The Council shall have the right to terminate the Contract or to terminate the provision of any part of the Services, at any time by giving three months written notice to the Supplier. The Council may extend the period of notice at any time after service of such a notice before it expires, subject to agreement on the level of service to be provided by the Supplier during the period of extension.

32 CONSEQUENCES OF TERMINATION

32.1 Where the Contract is terminated under Clause 30 the following shall apply:

- i. Any sums due or accruing from the Council to the Supplier may be withheld or reduced by such an amount as the Council, in its absolute discretion, considers reasonable and appropriate in the circumstances;
- ii. The Council may make alternative arrangements to procure Goods, including the letting of another Contract;
- iii. Where the total cost reasonably and properly incurred by the Council by reason of such arrangements exceed the amount that would have been payable to the Supplier for the completion of the services, the excess shall, be recoverable from the Supplier.

32.2 Except where the Council has terminated the Contract by reason of the Supplier's default, the Supplier shall have the right to claim from the Council reimbursement of all reasonable costs properly incurred in relation to the orderly cessation of the supply of Goods, including any commitments, liabilities or expenditure which are reasonably and properly incurred, and would otherwise represent an unavoidable loss by the Supplier by reason of the

termination of the Contract. In such an instant the Council will not indemnify the Supplier against loss of profit.

- 32.3 Where the Contract is terminated under Clause 30 the Council may during the notice period;
- i. Direct the Supplier, where the supply of Goods or Services has not yet commenced; to refrain from commencing such supply or where the supply has been commenced to cease same immediately;
 - ii. Direct the Supplier to complete in accordance with the Contract the Supply of all or any Goods or Services or any part or component thereof, which shall be paid at the agreed Contract Price.

33 DISPUTE RESOLUTION

- 33.1 All disputes, differences or questions between parties to the Contract with respect to any matter arising out of or relating to the Contract, other than a matter of things as to which the decision of the Council is under the Contract to be final and conclusive, shall after written notice by either party to the Contract to the other be referred to a single arbitrator agreed for that purpose or in default of such agreement within twenty-one days, appointed at the request of either party by the Chairman of the Royal Institution of Chartered Surveyors Northern Ireland Branch. The decision of such arbiter shall be final and binding on the parties of the Contract.
- 33.2 The provision of the Arbitration Act 1996 shall apply to any arbitration under this contract and such arbitration shall be conducted solely in Northern Ireland.

34 RIGHTS OF THIRD PARTIES

- 34.1 Nothing in this contract confers or purports to confer on any third party any right to enforce any term of the Contract.

35 SEVERABILITY

- 35.1 If any provision of these conditions is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the illegal, invalid, wrong or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Council and the Contractor shall immediately commence negotiations in good faith to remedy the invalidity.

